

SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA, <p align="center">Plaintiff,</p> <p align="center">-VS-</p> STEVEN DEMOCKER, <p align="center">Defendant.</p>	Case No. P1300CR201001325 RULING	<p align="center">FILED</p> <p align="center">FEB 10 2012</p> <p>DATE: <u>2</u> O'Clock <u>10</u> .M.</p> <p align="center">SANDRA K. MARKHAM, CLERK</p> <p>BY: <u>SHEETAL PATEL</u> Deputy</p>
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HONORABLE GARY E. DONAHOE DIVISION VISITING JUDGE	BY: Cheryl Wagster Judicial Assistant DATE: February 10, 2012
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Following an evidentiary hearing on February 8, 2012, the Court took under advisement the State's "Motion to Admit Defendant's July 21, 2009 Interview." The Court has considered the pleadings and the evidence presented at the hearing, including the exhibits.

Defendant contends that the interview was a "free talk" and, therefore, his statements should be deemed involuntary. The evidence does not support Defendant's position. Both Defendant's former defense attorney, John Sears, and the former prosecutor, Joe Butner, agreed that the July 21, 2009 interview was not a "free talk" because there was no grant of use or transactional immunity and no other benefit was promised Defendant as an incentive for Defendant to provide the information. In Mr. Butner's words, there was no *quid pro quo* for the information provided by Defendant. Defendant, through his attorney, approached the prosecutor and voluntarily gave an investigative interview in hopes that the information would exculpate him of the murder of Carol Kennedy and inculpate other persons for the murder.

In *State v. Boggs*, 218 Ariz. 325, 180 P.3d 392, ¶ 44 (2008), the court wrote:

Only voluntary statements made to law enforcement officials are admissible at trial. *Id.* at 127 ¶ 30, 140 P.3d at 910. A defendant's statement is presumed involuntary until the state meets its burden of proving that the statement was freely and voluntarily made and was not the product of coercion. *State v. Arnett*, 119 Ariz. 38, 42, 579 P.2d 542, 546 (1978). The state meets its burden "when the officer testifies that the confession was obtained without threat, coercion or promises of immunity or a lesser penalty." *State v. Jerousek*, 121 Ariz. 420, 424, 590 P.2d 1366, 1370 (1979). In determining whether a confession is voluntary, we consider whether the defendant's will was overcome under the totality of the circumstances. *State v. Newell*, 212 Ariz. 389, 399 ¶ 39, 132 P.3d 833, 843 (2006). To find a confession involuntary, we must find both coercive police behavior and a causal relation between the coercive behavior and the defendant's overborne will. *Colorado v. Connelly*, 479 U.S. 157, 165-66, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). In this case, the court did not abuse its discretion in ruling the statements voluntary.

In this case, there was absolutely no evidence of coercive police behavior. Defendant wanted to give the information to the prosecutor, waived the attorney-client privilege as to the events surrounding the two anonymous emails and the voice-in-the-vent story. Other than agreeing to conduct the interview outside the jail and having the County Attorney instead of the Sheriff investigate the facts related by Defendant, the State promised nothing to obtain Defendant's statement. Based on the evidence presented, the Court finds and concludes that the State has met its burden of proving that Defendant's statements during the July 21, 2009 interview were freely and voluntarily made and that there was no police coercion that overcame Defendant's will. Therefore,

IT IS HEREBY ORDERED granting the State's "Motion to Admit Defendant's July 21, 2009 Interview."

IT IS FURTHER ORDERED that if the State intends to offer into evidence any portion of a transcript of the July 21, 2009 interview, the transcript shall have been prepared by a certified court reporter from the audio recording.

Also pending before the Court are the State's "Motion for Reconsideration" and Defendant's "Motion for Extension of Time to File Expert Reports." The Court has considered the pleadings and the information provided by counsel on February 8, 2012.

IT IS FURTHER ORDERED as to the State's "Motion for Reconsideration:"

- (1) UBS Emails and Defendant's cell phone records: the motion is granted without prejudice to Defendant's right to make an appropriate objection after the Court has had the opportunity to evaluate the proposed evidence in the context of the new charges and the evidence that has been presented at trial.
- (2) Defendant's statements: the prior rulings (*see* transcript dated March 30, 2010) regarding the testimony of Ms. O'Non are affirmed.
- (3) UBS computer time log: the motion is granted.
- (4) American Express and Bank of America records: the motion is granted without prejudice to Defendant's right to seek preclusion in the event the payment issue for Defendant's proposed forensic accountant is not resolved.
- (5) Recorded jail calls: the motion is denied.
- (6) Search for carbon monoxide: affirming the prior rulings; therefore, the motion is denied.

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IT IS FURTHER ORDERED regarding Defendant's "Motion for Extension of Time to File Expert Reports," (1) granting an extension for the disclosure of the report of Gregg Curry for ten business days from the date that the \$43,000 payment issue is resolved, (2) denying the motion regarding Mark Cardwell because no report is anticipated, and (3) granting an extension for the disclosure of the report of Mike O'Kelly to February 22, 2012. No further extensions will be granted.

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